IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1682 OF 1996

1. Smt.Nilofar Abdul Rahim Khan
2. Miss Eliyas Abdul Rahim Khan
3. Imtiyas Abdul Rahim Khan
4. Miss Sumayya Abdul Rahim Khan
5. Miss Rahat abdul Rahim Khan
6. Haidar Papa Miya Khan
7. Mrs.Shirinbai Haidar Khan ...Appellants

vs.

1.Balasaheb Baburao Bhise
2.Tukaram Nivrutti Gaikwad
3.New India Insurance Co.Ltd.Pune ...Respondents

Mr.P.B.Shaligram for the Appellants

CORAM: A.S.OKA,J.
DATE : DECEMBER 10,2007.

ORAL JUDGMENT:

1. I have heard the leaned Advocate for the Appellants. None appears for the Respondents. The Appellants are the claimants in a claim petition filed under the Motor Vehicles Act,1939 claiming compensation on account of demise of one Abdul Rahim Khan in a motor accident. The first Appellant is the widow of the deceased and the second to fifth Appellants are the children of the deceased who were admittedly minors at the time of the accident. The ages of the children at the time of accident were 7,5,3 and 1 respectively. The sixth and seventh Appellants are the parents of the deceased.

2. On 20th February 1985 the deceased was proceeding by his Bajaj M-50 Moped by Tadiwala Road. He was proceeding from

Yerwada side towards R.T.O. office. A truck which was owned by the first Respondent and driven by the second Respondent came from opposite side and gave a dash to the Moped which was being plied by the deceased. The deceased sustained serious injuries and he succumbed to the injuries on 22nd February 1985. According to the case of the Appellants he was drawing a salary of Rs.1685/- per month.

3. The claim petition was contested by the third Respondent which is the insurer of the truck by contending that there was no negligence on the part of the truck.

4. The learned Member of the Tribunal found that the accident occurred due to negligence on the part of the deceased as well as the second Respondent who was driving the truck. The learned trial Judge held that the contribution of the driver of the truck was only to the extent of 25%. The learned Judge came to the conclusion that the Appellants are entitled to total compensation of Rs.1,60,000/-. He made a deduction of Rs.75,000/- and fixed the compensation amount at Rs.40,000/- inclusive of a sum of Rs.15,000/- granted earlier on account of no fault liability.

5. The learned Advocate for the Appellants has invited my attention to the oral and documentary evidence on record and

in particular evidence of one Mr.Usman, the third witness examined by the Appellants. He also invited my attention to the certified copy of the panchnama which is on the record of the claim petition. He submitted that it is obvious that the accident occurred solely due to rash and negligent driving on the part of second Respondent. He, therefore, submitted that the deceased did not contribute to the accident in any manner. He also submitted that the compensation amount fixed by the tribunal is on the lower side. He submitted that a sum of Rs.4,000/- granted on account of loss of consortium is extremely on the lower side.

6. I have given careful consideration to the submissions of the learned Advocates for the Appellants. None appears for the Respondents. I have perused the Record and Proceedings as well as the notes of evidence.

7. The only relevant witness examined by the Appellants on the issue of negligence is one Mr.Yusuf Ismail Aga. He stated that the truck was proceeding towards Wadia College from Raja Bahadur Mill and the truck was in speed. He stated that the deceased who was riding the M-50 Moped was coming from the opposite direction. He stated that the truck gave a dash against the moped. He stated that the driver of the truck applied brakes. In the cross examination he stated that the accident in question occurred in the middle of the road. He

stated that the accident occurred prior to the turn on the said road. I have also perused the panchnama which is at Exh.71. After noting the damage to the M-50 as reflected from the panchnama and after considering the spot panchnama of the accident, the learned Judge recorded a finding that the deceased has contributed to the accident to the extent of 75%.

8. Going by the evidence of the said Yusuf Ismail Aga, it appears that a suggestion was given to the said witness in the cross examination that the accident in question occurred at the middle of the road. The witness accepted the correctness of the said suggestion. The width of the road as shown in the spot panchnama appears to be between 20 to 25 feet. The spot panchnama shows that the point of impact may be slightly on the side of the truck. There is no challenge to the version of the said witness that the truck was proceeding in a speed. The deceased was plying a M-50 moped. There was no reason for him to proceed through the centre of the road. Therefore, there is some negligence on the part of the deceased. However, the truck was in a speed and there is nothing on record to show that the driver of the truck made any efforts to avoid the accident. In fact, the driver of the truck has not stepped into the witness box. Thus, the tribunal has committed an error by holding that the deceased has contributed to the accident to the extent of 75%. On plain reading of the evidence on record, the learned trial Judge

ought to have held that the contribution of the deceased was to the extent of 50% and to that extent the Award will have to be modified.

9. Now turning to the issue regarding the quantum of compensation, the age of the deceased appears to be 37 years at the time of death. There does not seem to be any dispute about the age of the deceased at the time of accident. Therefore, the multiplier of 13 applied by the trial court is reasonable. The trial court has taken the income of the deceased at Rs.1459.64 as disclosed from the certificate of the employer which is at Exh-73. However, the said certificate discloses that apart from this income, the deceased was at the relevant time drawing a sum of Rs.300/- p.a. as a leave travel allowance and was entitled to Bonus of Rs.2916.60. p.a. Thus, in addition to monthly income of Rs.1459.64, he was getting a sum of Rs.3200/- p.a. by way of allowances. The certificate at Exh-73 discloses that the deceased was in the employment of the said employer right from the year 1978. The certificate discloses that the deceased was eligible to receive bonus at the rate of 20% of the basic pay and D.A. subject to maximum of Rs.3840/- p.a. Considering the relative young age of the deceased and considering the fact that he was in the employment right from the year 1978, some allowance will have to be made for future prospects for increase in the salary. Taking overall view of

the matter, for the purpose of calculating the mulitiplicand, the income of the deceased ought to have been taken at Rs.1800/- p.m. After deducting 1/3rd of the amount on account of personal expenditure, the dependency ought to have been taken at Rs.1200/- p.m. Therefore, the multiplicand comes to Rs.14,400/-. Thus, applying multiplier of 13, the total amount of loss of dependency comes to Rs.1,87,200/-. Considering the fact that the first Appellant is the widow of the deceased, the usual amount of Rs.10,000/- ought to have been granted on account of loss of consortium etc. So the total amount of compensation payable to the Appellants comes to Rs.1,97,200/-. Thus, the total amount can be taken at Rs.1,98,000/-. After deducting 50% from the said amount, the compensation payable will be Rs.99,000/-. The tribunal has awarded only Rs.40,000/- and to that extent the enhancement will have to be granted. However, in so far as interest on enhanced amount is concerned, the same will have to be fixed at the rate of 9% p.a.

10. Hence, I pass the following order :

i) Appeal is partly allowed

ii) In addition to the Award in the sum of Rs.40,000/- (inclusive of Rs.15,000/- paid under no fault liability) with interest thereon at the rate of 12% p.a., a further

sum of Rs.59,000/- shall be paid by the Respondents to the Appellants together with interest at the rate of 9% p.a from 19th August 1985 till realisation of the amount or payment. In addition to proportionate costs awarded on the sum of Rs.40,000/-, the Appellants will be entitled to proportionate costs of the claim petition on the sum of Rs.59,000/-.

iii) It is clarified that the liability of the Respondents will be joint and several.

iv) The Appellants will be entitled to proportionate costs of this Appeal from the Respondents.

v) Time of four months is granted to the Respondents to deposit the enhanced amount.

vi) After the enhanced amount is deposited, the learned Member of the tribunal will pass an appropriate order regarding disbursement of the additional amount of compensation after hearing the parties.

vii) Writ and Record and Proceedings to be sent early.

JUDGE